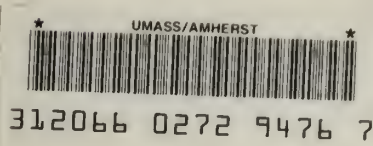


MASS. 557.2: EL25/2



# ELECTION DAY LEGAL SUMMARY

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Office of Secretary of State  
**MICHAEL JOSEPH CONNOLLY**, Secretary

Elections Division  
One Ashburton Place, Room 1705  
Boston, MA 02108  
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(800)-462-VOTE

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## ELECTION DAY LEGAL SUMMARY

This is a summary of the law concerning some common situations which may occur on election day. For exact details, consult the statutes and regulations which are cited at the end.

Further reference may be made to the Secretary of State's Election Officers Handbook for the type of voting equipment involved. For more complete discussion of the legal remedies available, see Legal Remedies for Election Problems.

- . Polling hours. The hours polls must be open are set by city councils and town selectmen, subject to minimum hours set by state law (see table) and by local ordinances and by-laws, if any.

- . Public observation. Observers are permitted inside the polling place outside the "guard rail" or its equivalent (that is, outside the voting area) throughout the day and after the polls close, unless they are disorderly or disrupt the access of voters. Before the polls open, the ballot box must be shown to be empty to all observers. Where lever voting machines are used, candidates or their representatives authorized in writing may check the vote counters or printer sheets within a half hour before the polls open, and for one hour after the announcement of the vote at the end of the day. Observers are also allowed at a punchcard computer "tabulation center".

- . Checkers. Observers may have copies of the voting list with them and may mark them. Election officers must announce distinctly the name, address, and party (in a primary) of all voters before they vote when they "check in." No credentials are required for "checkers" or other observers, but it is helpful to notify election officials by letter.

- . Campaign material. The law prohibits distribution or posting of campaign material in the polling place, in the building where the polling place is located, on the walls, on the premises on which the building stands (not including an entire large parcel) or within 150 feet of the building entrance door to the polling place. Access to the polling place must be kept open and unobstructed. Voters may bring with them individual pieces of campaign material for their own use.

- . Voters not on voting list. If the name of a person claiming the right to vote is not on the voting list, because of clerical error, because his or her name was not included on the annual street list, or for any other reason, the warden must contact the local election office (usually at city or town hall). A telephone or equivalent must be at the polling place for this purpose. If the registrars determine that the voter registered to vote in the past, and the voter presents identification showing a current address in the precinct, the voter must be permitted to vote at the polling place. If it is not possible to determine this over the phone, the voter should be instructed to go to the local election office, and, if eligible, will be permitted to vote "over the counter" there by absentee ballot. No return trip is necessary, although voters may return to the polling place and vote there if they wish. Omitted voters must be allowed to vote if they have registered to vote in the past, and have not since moved their legal residence out of the city or town, even if they have changed their names or have moved within the city or town.

- . Escrow ballots. A person who is not allowed to vote for any reason must be allowed to mark an "escrow ballot" (or punchcard). An election officer must explain this right to such a person. An oath is administered to the voter, who then writes his or her name and

address on the back of the ballot. Escrow ballots are not cast in the ballot box or counted when the polls close, but are set aside in a designated envelope which is sealed after the polls close.

- . Assistance to voters. Voters who are unable to vote because of blindness, other physical disability, or inability to read or to read English may be assisted by any person they designate, or by two election officers of different political parties.

- . Challenges. Any person may challenge a voter for "any legal cause," for example, not the person he or she claims to be, or name already voted. To challenge a voter, inform the warden and the election officer marking the voting list. An oath is then administered to the voter, and his or her name and address, the name of the challenger, and the reason for the challenge are marked on the back of the ballot, which is then cast. (Paper absentee ballots are used for this purpose in voting machine precincts. Where punchcards are used, the information is written on the envelope, and an identifying number is placed both on the envelope and on the ballot card.) Absentee ballots may also be challenged immediately before they are cast at the polling place. Challenged ballots are counted like all the others, but if there is a recount or contest, the challenges will be heard and decided, and the ballots will be counted or not counted accordingly. It is illegal to challenge for purposes of intimidation or to find out how someone voted.

- . Identification. An election officer who is so instructed by the city or town clerk or election commissioner may request any voter to present written identification. Such requests may not discriminate, but must be random, consistent, or based on reasonable suspicion. If voters fail to present suitable identification (such as a driver's license, or any other printed information containing their name and address), they must still be allowed to vote, but any person may "challenge" such a voter (see above).

- . Closing of polls. At the time set for closing the polls, any voters in line must still be permitted to vote. The polling place must remain open afterwards, and the public may observe the counting of votes from outside the "guardrail."

- . Counting votes. Ballots must be counted in accordance with the voter's intent if it can be determined with reasonable certainty. For write-in or sticker votes, this is true even if the voter has omitted the address or made a mistake in the name or address of the candidate.

## **WHAT TO DO IF A PROBLEM ARISES ON ELECTION DAY**

1. Point out the problem politely to the warden or presiding officer at the polling place, and request the action you believe should be taken.

2. If the problem persists, your local campaign headquarters should contact the city or town clerk or election commission.

3. If the problem is still not resolved, your headquarters should call the Secretary of State's Elections Division, (617) 727-2828 or (800) 462-VOTE, which will be open throughout the day, until at least 9:00 p.m. for regular state primaries and elections.



